

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FOUR
Civ. No. B 038975
(Super. Ct. No. C420153)

CHURCH OF SCIENTOLOGY OF CALIFORNIA
and MARY SUE HUBBARD,

Appellants,

-against-

GERALD ARMSTRONG,

Defendant.

BENT CORYDON,

Appellee.

Appeal from Superior Court of California
County of Los Angeles
Judge Bruce R. Geernaert

APPELLANTS' OPPOSITION TO DEFENDANT'S
PETITION FOR PERMISSION TO FILE
RESPONSE AND FOR TIME TO FILE

Defendant Gerald Armstrong, who did not participate in the proceedings below upon which these appeals are based and who took no appeal from the underlying orders below, has sought leave for permission to file a brief herein and for an extension of 60 days in which to do so. Defendant's petition for leave should be denied, for the reasons stated below:

1. This appeal and cross-appeal are from orders of the Superior Court below granting in part and denying in part the applications of Bent Corydon to unseal the file in this case. The file in this case was sealed pursuant to a settlement agreement and stipulation entered into, through counsel, by the plaintiffs Church of Scientology of California and Mary Sue Hubbard, on the one hand, and the defendant, Gerald Armstrong, on the other hand. As set forth in the appellants' briefs herein, the sealing of the file was an essential part of the settlement agreement, pursuant to which Mr. Armstrong received a substantial sum of money in settlement of his cross-complaint.

Mr. Armstrong thereby explicitly agreed to, and thereby waived any objection to, the sealing of the file herein. He has no recognizable interest in the outcome of this appeal.

2. Mr. Armstrong's counsel of record in this case was informed and aware of the proceedings below initiated by Mr. Corydon. Counsel for appellants, indeed, mailed complete sets of all such papers to Mr. Armstrong's counsel. Mr. Armstrong, through his counsel, did not participate in the proceedings below, and chose not to notice an appeal from any of the orders entered below.

Mr. Armstrong did file a pleading in this Court objecting to the inclusion of certain exhibits to a document filed by Mr. Corydon on December 23, 1988, and asking this Court to seal those exhibits. Significantly, in his pleading Mr. Armstrong supported the position of the appellants herein, stating: "Numerous materials in the Armstrong case filed [sic]

were sealed at the behest of both parties as part of the settlement of the case. That sealing was an intrical [sic] part of the settlement, which settlement should not be undone."

This appeal thereafter has proceeded with full briefing by the parties, the last brief having been filed on January 18, 1990. Now, over one month later, Mr. Armstrong seeks 60 days to file a brief in a proceeding over which he has exhibited little concern and asserted no legal interest, other than to maintain the seal on the file. In seeking such relief, Mr. Armstrong has apparently fired his counsel of record and is purportedly proceeding pro se, while stating that he hopes to retain new counsel in the future.

Mr. Armstrong has provided no reasons why he should be permitted to delay the proceedings in this appeal at this late date. He has not identified what interests he wishes to assert. He has not stated why he did not instruct his attorneys of record to file or seek to file a brief at the proper stages of this appeal.

Mr. Armstrong's request should be denied because of his failure to participate or assert an interest in the proceedings below, because he has waived whatever interest he may have, and because his application is untimely.


3. Mr. Armstrong further states that he is barred from filing a brief by the settlement agreement which he entered into in this case. Mr. Armstrong did waive the right to file any further briefs in opposition to positions asserted by the appellants arising out of this case. He did so freely and in

substantial settlement of his cross-complaint. He has stated no reason to be relieved from his prior agreement.

CONCLUSION

For the reasons stated above, Mr. Armstrong's "petition" should be denied in all respects.

Respectfully submitted,


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Counsel for Appellants

Dated: March 6, 1990

CERTIFICATE OF SERVICE

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

Simone Leak, being duly sworn deposes and says, that she is not a party to the action, is over 18 years of age and resides in New York, New York. That on the 6th day of March, 1990, she served the within Appellants' Opposition to Defendant's Petition for Permission to File Response and for Time to File upon:

CLERK OF THE SUPERIOR COURT
111 North Hill Street
Los Angeles, California 90012

TOBY L. PLEVIN, ESQ.
6380 Wilshire Blvd., Suite 1600
Los Angeles, California 90048

PAUL MORANTZ, ESQ.
P.O. Box 511
Pacific Palisades, California 90272

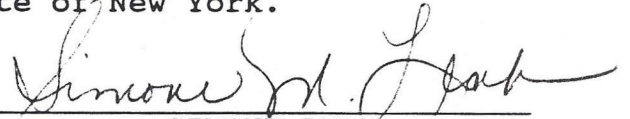
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5855 Topanga Canyon Blvd., #400
Woodland Hills, California 91367

GERALD ARMSTRONG
6838 Charing Cross Road
Berkeley, California 94705

the addresses designated by said attorneys for that purpose, by depositing a true copy of same enclosed in a post-paid properly addressed wrapper, in a post office official

depository under the exclusive care and custody of the United States Postal Service within the State of New York.



SIMONE LEAK

Sworn to before me
this 6th day of March, 1990



NOTARY PUBLIC

TERRY GROSS
Notary Public, State of New York
No. 31-4942893
Qualified in New York County
Commission Expires October 11, 1992